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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,134	12/28/2001	Timothy C. Ostwald	2001-065-TAP	1623

7590 12/28/2004

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EXAMINER

KEENAN, JAMES W

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/034,134	OSTWALD ET AL.	
	Examiner James Keenan	Art Unit 3652	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
Period for Reply			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.			
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 			
Status			
<p>1)<input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>21 October 2004</u>.</p> <p>2a)<input type="checkbox"/> This action is FINAL. 2b)<input checked="" type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>			
Disposition of Claims			
<p>4)<input checked="" type="checkbox"/> Claim(s) <u>1-20</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) _____ is/are withdrawn from consideration.</p> <p>5)<input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6)<input checked="" type="checkbox"/> Claim(s) <u>1-20</u> is/are rejected.</p> <p>7)<input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8)<input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.</p>			
Application Papers			
<p>9)<input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10)<input type="checkbox"/> The drawing(s) filed on _____ is/are: a)<input type="checkbox"/> accepted or b)<input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</p> <p>11)<input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.</p>			
Priority under 35 U.S.C. § 119			
<p>12)<input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a)<input type="checkbox"/> All b)<input type="checkbox"/> Some * c)<input type="checkbox"/> None of:</p> <p>1.<input type="checkbox"/> Certified copies of the priority documents have been received.</p> <p>2.<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p> <p>3.<input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p>			
<p>* See the attached detailed Office action for a list of the certified copies not received.</p>			
Attachment(s)			
<p>1)<input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.</p> <p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____.</p>			

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/21/04 has been entered.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 5-11, and 13-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Luffel et al (US 6,222,699, previously cited).

Luffel et al show a modular storage library array essentially as claimed, as noted in the previous Office action, including robots which receive exclusive and uninterrupted power through guide rails, each of which forms a single track along which the robots move. The guide rails may be configured in a complex path "in any geometric configuration" (col. 7, line 56) which "may be large enough to fill ... an entire warehouse" (col. 8, line 25). Although the phrase "line of sight" is not explicitly

disclosed, it is inherent within this description that the robots would be powered and controlled beyond the line of sight of the controller when used in such a modular array.

In the previous Office action, it was stated that Luffel et al do not utilize the rails to effect control of the robots, instead utilizing an optical wireless control system. However, Luffel et al is a CIP of and incorporates by reference the entire disclosure of US Patent application SN 09/143,208, (US Patent 6,490,122, previously cited), issued to Holmquist et al. That patent describes in col. 17, lines 19-59 an alternate embodiment in which both the power and control signals are sent through the guide rails on which the robots run. The Luffel et al apparatus by definition therefore includes this feature.

4. Claims 1-3, 5-11, and 13-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Luffel et al.

This rejection is utilized in the event applicant is able to antedate the publication date but not the filing date of the reference.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-8, 12, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luffel et al.

Although claims 1-3 and 5-8 are anticipated by Luffel et al, this rejection is set forth in the event that the 102 rejection is overcome by argument and/or amendment. It is to be considered an additional, not alternative, rejection.

As noted above, Luffel et al do not explicitly recite the "line of sight" feature. In the event the reference is shown to not inherently possess this feature, it nevertheless would have been obvious for one of ordinary skill in the art at the time of the invention to have so modified Luffel et al, as this would merely be a logical design expediency in a system which utilized a complex geometric path to form an array in a storage warehouse, particularly since any system in which the control signals are transmitted through the tracks rather than requiring cable or optical controls would have no need to be constrained to a line of sight system.

Re claims 4, 12, and 18, to have mounted the storage cells and guide rails on "walls", as broadly claimed, would have been a simple design expediency, particularly absent any showing of criticality.

7. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 703-308-2559. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James Keenan
Primary Examiner
Art Unit 3652

jwk
12/21/04